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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91199186
Party	Plaintiff Showtime Networks Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**



Trademark: **MY PHONE FLIX** and  
Applications: 77/933,144 and 77/929,853  
Filed: February 6, 2010 and February 11, 2010  
Published: November 20, 2010

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**SHOWTIME NETWORKS INC.**

Opposition No. **91199186**

Opposer,

v.

**DMA INTERNATIONAL LLC,**

Applicant.

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**OPPOSER'S MOTION FOR ENTRY OF JUDGMENT  
BASED ON APPLICANT'S VIOLATION OF BOARD ORDER**

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Opposer Showtime Networks Inc. respectfully moves, pursuant to 37 C.F.R. § 2.120(g)(1) and Fed. R. Civ. P. 37(b)(2)(a)(vi), for entry of judgment against Applicant DMA International LLC ("Applicant") as a sanction for Applicant's violation of the Board's order entered November 15, 2011 directing Applicant to provide responses to Opposer's pending discovery requests.

In support of this motion, Opposer states as follows:

1. On November 15, 2011, the Board entered a discovery order in this case upon a motion to compel by Opposer to which Applicant has now failed to respond. In its order, the

Board took note of Applicant's failure to respond to interrogatories and requests for production that Opposer had served on Applicant on August 4, 2011, and the Board directed that Applicant must serve its responses, without objection, and any responsive documents thereto, no later than twenty days from the date of the order, *i.e.*, by December 5, 2011.

2. Applicant has failed to comply with the Board's order.

3. As of the date of filing of this motion, that is, more than three weeks past the deadline set in the Board's order, Applicant has provided no discovery responses and no documents of any kind.

4. Applicant has not contacted Opposer or Opposer's counsel to request any extension of time for the December 5, 2011 deadline, nor has Applicant engaged in any communication with Opposer or Opposer's counsel of any kind, either before or after that deadline.

5. By its failure to comply with the Board's order, and its failure to communicate with Opposer, Opposer's counsel, or the Board, Applicant has defaulted on its obligations in this proceeding and has effectively abandoned its application for registration of the marks at issue in this case.

6. In its order of December 15, 2011, the Board admonished Applicant that "[i]n the event that applicant fails to serve full responses as ordered herein, opposer's remedy lies in a motion for the entry of sanctions in the form of entry of judgment, as appropriate." (Order, at 2.)

7. It is well-settled under the Board's precedents that a party's failure to comply with a discovery order where no excuse is given, nor any response provided, may result in entry of judgment against the offending party where no lesser remedy would be effective, and where

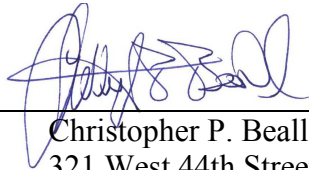
the offending party has demonstrated evasiveness. *See, e.g., Caterpillar Tractor Co. v. Catfish Anglers Together, Inc.*, 194 USPQ 99, 99 (TTAB 1976) (judgment entered where applicant provided no reason for not complying with Board order compelling discovery); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000) (“Default judgment is a harsh remedy, but it is justified where no less drastic remedy would be effective, and there is a strong showing of willful evasion.”); *see also Benedict v. Super Bakery, Inc.*, --- F.3d ----, 2011 WL 6793989 at \*5 (Fed. Cir. Dec. 28, 2011) (affirming Board’s entry of default for failure to comply with discovery orders).

8. In this instance, not only has Applicant failed entirely to comply with Board’s order, Applicant remains utterly unresponsive in this case, having failed to respond to any of the various communications from undersigned counsel throughout the pendency of this proceeding, as well as having failed to file a response of any kind to the underlying motion to compel by Opposer. Under such circumstances where a party is entirely unresponsive, no lesser sanction other than entry of judgment is appropriate or effective. To do otherwise would merely force upon Opposer the expense and burden of continuing to litigate a case where Applicant is essentially absent.

**WHEREFORE**, Opposer Showtime Networks Inc. respectfully requests that the Board enter judgment with prejudice against Applicant, directing that Applicant’s applications for registration in this case, Serial Nos. 77/933,144 and 77/929,853, are denied.

Respectfully submitted this 29th day of December, 2011.

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.



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Attorneys for Opposer  
Showtime Networks Inc.

### **CERTIFICATE OF SERVICE**

I do hereby certify that on this 29th day of December, 2011, a true and correct copy of the foregoing **OPPOSER'S MOTION FOR ENTRY OF JUDGMENT BASED ON APPLICANT'S VIOLATION OF BOARD ORDER** has been transmitted by United States Postal Service first class mail, postage prepaid, with a courtesy electronic copy also delivered by e-mail transmission, to:

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